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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA

Plaintiff,

v.

Archer-Daniels-Midland Company,  
Ashland Chemical Company,  
Division of Ashland, Inc.,  
~~Baltimore-Emmis Land Company,~~  
Inc. (f/k/a/ Gibson-Homans),  
Brookside Auto Parts,  
Lincoln Electric Company,  
Technical Products, and  
Werner G. Smith,

Defendants.

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CIVIL ACTION NO. 1:98CV 2302

Judge Nugent

MOTION TO ENTER CONSENT DECREE  
AND MEMORANDUM IN SUPPORT

On October 8, 1998, the United States lodged with this Court a proposed consent decree resolving all claims of the United States against the named defendants in this matter under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. On November 6, 1998, the United States published in the Federal Register a notice advising the public of the lodging of the proposed decree and inviting comment. 63 Fed. Reg. 60022. No comments were received concerning the proposed decree. Accordingly, the United States respectfully moves that the Court approve and enter the proposed decree.

Pursuant to the proposed settlement, the settling defendants will perform a response action pursuant to an EPA-approved remedial action plan at the Swamp portion of the Ohio Drum Reconditioning Site located in Cleveland, Ohio. The response action will include dewatering as necessary, excavation of swamp material, backfilling and grading, and the appropriate characterization and management of wastes. In addition, the settling defendants have agreed to reimburse \$100,000 of the United States' past response costs and to pay EPA's future costs of overseeing their work under the proposed decree.

The approval of a consent decree is a judicial act that is committed to the informed discretion of the trial court. United States v. Jones & Laughlin Steel Corp., 804 F.2d 348 (6th Cir. 1986). The court does not have the power to modify a settlement; it may only accept or reject the terms to which the parties have agreed. See United States v. Akzo Coatings of America, 949 F.2d 1409, 1425 (6th Cir. 1991). In general, public policy strongly favors settlements of disputes without litigation. Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1372 (6th Cir.), cert. denied, 429 U.S. 862 (1976). Settlements conserve the resources of the courts, the litigants, and the taxpayers and "should . . . be upheld whenever equitable and policy considerations so permit." Id. at 1372. E.F.O.C. v. Hiram Walker & Sons, 768 F.2d 884, 888 (7th Cir. 1985) cert. denied, 478 U.S. 1004 (1986).<sup>1</sup>

Public policy favoring settlements "has particular force where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing

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<sup>1</sup> The courts have recognized that settlements are particularly useful for the government because they "maximize the effectiveness of limited law enforcement resources" by permitting the government to obtain compliance with the law without lengthy litigation. United States v. City of Jackson, 519 F.2d 1147, 1151 (5th Cir. 1975); see also, United States v. Hooker Chemical & Plastics Corp., 540 F. Supp. 1067, 1080 (W.D.N.Y. 1982).

the proposed settlement." United States v. Cannons Engineering, 899 F.2d 79, 84 (1st Cir. 1990). This principle is particularly important where, as in this case, the consent decree has been negotiated jointly by the Justice Department and a federal administrative agency that has responsibility for enforcing CERCLA. E.g., Cannons Engineering, 899 F.2d at 82 ("the district court must refrain from second-guessing the Executive Branch."); United States v. Hercules, 961 F.2d 796, 798 (8th Cir. 1992); see also United States v. Rohm and Haas Co., 721 F. Supp. 666, 686 (D.N.J. 1989).

In reviewing consent decrees, courts determine "not whether the settlement is one which the Court itself might have fashioned, or considers as ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute." Cannons Engineering, 899 F.2d at 84. Accord, United States v. Akzo Coatings of America, 949 F.2d at 1426. This is particularly true of settlements negotiated pursuant to CERCLA. Id.

In this case, the parties negotiated the proposed settlement at arms length. There has been no suggestion of procedural unfairness. The settlement provides the United States with the performance of a necessary response action at the Ohio Drum Site and with reimbursement of past and future response costs in exchange for which the settling parties obtain a covenant not to sue. There has been no suggestion that the negotiation of the settlement or the provisions of its terms have produced anything other than a reasonable result. Such settlements preserve the resources of the Superfund to be used at sites where responsible parties are not available to perform work and are therefore consistent with the purposes of CERCLA.

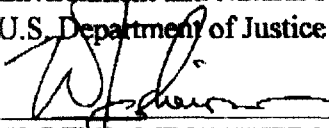
For all of the above reasons, the United States submits that the Court should approve the proposed settlement and sign and enter the proposed consent decree.

DATED: December 15, 1998

Respectfully submitted,

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Plaintiff,

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Ashland Chemical Company,  
Division of Ashland, Inc.,  
Baltimore-Ennis Land Company,  
Inc. (f/k/a/ Gibson-Homans),  
Brookside Auto Parts,  
Lincoln Electric Company,  
Technical Products, and  
Werner G. Smith,

Defendants.

CIVIL ACTION NO. 1:98CV 2302

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CERTIFICATE OF SERVICE

The undersigned attorney for the United States hereby certifies that he has served the United States' Motion to Enter Consent Decree and Memorandum in Support on all the parties to this action by placing a true copy thereof in the United States mail, first class, postage prepaid, and directing it to counsel at the addresses listed on the attached sheet.

Dated

12/15/98

W. Benjamin Fisherow

Assistant Chief

Environmental Enforcement Section

United States Department of Justice

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